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8 **STATE OF WASHINGTON**
SNOHOMISH COUNTY SUPERIOR COURT

9 STATE OF WASHINGTON,

NO.

10 Plaintiff,

11 v.

12 TOPCO FINANCIAL SERVICES, INC., a
13 Washington Corporation; TRACEY
14 AUSTELL, President of Topco Financial
15 Services, Inc., individually and as part of his
16 marital community; HARRY PACKER,
Secretary-Treasurer and Director, of Topco
Financial Services, Inc., individually and as
part of his marital community,

COMPLAINT FOR
INJUNCTIVE AND OTHER
RELIEF UNDER THE
CONSUMER PROTECTION
ACT

17 Defendants.

18
19 The Plaintiff, State of Washington, by and through its attorneys Robert M. McKenna,
20 Attorney General, and Shannon Smith, Senior Counsel, brings this action against the
21 defendants named herein. The State alleges the following on information and belief:

22 **I. INTRODUCTION**

23 1.1 The Plaintiff, State of Washington, brings this action pursuant to RCW 19.86,
24 the Consumer Protection Act. Plaintiff seeks a permanent injunction, and other equitable
25 relief, including civil penalties, and attorneys' costs and fees, based on violations of the
26 Consumer Protection Act.

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II. PLAINTIFF

2.1 The Plaintiff is the State of Washington ("State").

2.2 The Attorney General is authorized to commence this action pursuant to RCW 19.86.080 and RCW 19.86.140.

III. DEFENDANTS

3.1 Defendant Topco Financial Services, Inc. is a Washington for-profit corporation. Topco is located at 1721 Hewitt Avenue, Ste. 511, Everett, Washington, 98206. Topco transacts or has transacted business in the state of Washington.

3.2 Defendant Tracey Austell is the President, a Director, and 50 percent shareholder of Topco Financial Services, Inc., and as such, controls its policies, activities, and practices, including those alleged in this Complaint. Defendant resides at [REDACTED] Mill Creek, Washington, 98012. Defendant is married to Randi J. Austell, and together they constitute a marital community. Randi J. Austell also is a Director of Topco Financial Services, Inc. All actions taken by Defendant as alleged in this Complaint are for the benefit of his marital community. Defendant resides in the state of Washington and transacts or has transacted business in the state of Washington.

3.3 Defendant Harry Packer is the Secretary-Treasurer, a Director, and 50 percent shareholder of Topco Financial Services, Inc., and as such, controls its policies, activities, and practices, including those alleged in this Complaint. Defendant resides at 6810 NE 204th Street, Kenmore, Washington, 98028 and at 74711 Dillon Road, Space 551, Desert Hot Springs, California, 92241. Defendant is married to Jeanne Packer, and together they constitute a marital community. Jeanne Packer also is a Director of Topco Financial Services, Inc. All actions taken by Defendant as alleged in this Complaint are for the benefit of his marital community. Defendant resides in the state of Washington and transacts or has transacted business in the state of Washington.

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3 **IV. JURISDICTION AND VENUE**

4 **4.1** The State files this complaint and institutes these proceedings under the
5 Consumer Protection Act, RCW 19.86.

6 **4.2** The Defendants or their agents have engaged in the conduct set forth in this
7 complaint in Snohomish County and elsewhere in the state of Washington.

8 **4.3** Venue is proper in Snohomish County pursuant to RCW 4.12.020.

9 **V. NATURE OF TRADE OR COMMERCE**

10 **5.1** Defendants are now, and have been at all times relevant to this lawsuit, engaged
11 in trade or commerce within the meaning of RCW 19.86.020 through the collection of claims
12 owed to third-parties.

13 **5.2** Defendants have been at all times relevant to this action in competition with
14 others engaged in similar business in the state of Washington.

15 **VI. DEFENDANTS' BUSINESS ACTIVITIES**

16 **6.1** Defendants Topco Financial Services, Inc., Tracey Austell, and Harry Packer
17 (collectively, "Topco" or "Defendants"), engage in the collection of claims owed to third-
18 parties.

19 **6.2** Topco Financial Services, Inc. is a collection agency and is licensed as a
20 collection agency in the state of Washington pursuant to RCW 19.16.110.

21 **6.3** Many of Topco's clients are towing companies that hire Topco to collect
22 vehicle towing or impound claims.

23 **6.4** Topco attempts to collect its clients' claims through dunning letters and
24 telephone calls. In addition to the amount of the claim reported by the client-creditor, Topco
25 attempts to collect interest in the amount of 12 percent per annum on the original claim
26 balance.

1 6.5 Topco has employed individuals as collection agents to make telephone calls for
2 purposes of collecting claims, and otherwise assist Topco to collect claims. Defendants
3 Austell and Packer have acted as collection agents for Topco Financial Services, Inc.
4

5 **VII. FIRST CAUSE OF ACTION**

6 **(Using Harassing, Threatening, Intimidating, Embarrassing or Offensive Language)**

7 7.1 Plaintiff realleges Paragraphs 1.1 through 6.5 and incorporates them herein as if
8 set forth in full.

9 7.2 On numerous occasions, in connection with the collection of claims, Topco or
10 its representatives have used threatening, harassing, embarrassing, or offensive language when
11 communicating with debtors, including, but not limited to:

12 (a) Referring to debtors in disparaging terms, including, but not limited to,
13 "loser," "scum," "plight on society," "no good," "low life," "dead-beat," "worthless," "terrible
14 parents."

15 (b) Using offensive language by calling debtors names, including, but not
16 limited to: "worthless f**king loser," "piece of sh*t," "bi*ch," and "dumb a**."

17 (c) Disparaging debtors with comments including, but not limited to, "You
18 got yourself into this f**king situation," "Your mother raised you piss-poorly," and "What
19 kind of mother is she to raise a daughter like you," and "You're a piece of sh*t carpenter who
20 leaves their junk on the side of the freeway."

21 (d) After having been informed by a debtor that she was undergoing tests
22 for cancer, telling the debtor, "Aren't you dead, yet? I'm going to collect the money from you
23 dead or alive," and "Why don't you just die from cancer because you are a low-life deadbeat?"

24 (e) Threatening to "bi*ch slap" a debtor.

25 7.3 The conduct described in Paragraph 7.2 is an unfair or deceptive trade practice
26 in violation of RCW 19.86.020.

1 7.4 The conduct described in Paragraph 7.2 is not reasonable in relation to the
2 development and preservation of business, and is injurious to the public interest.
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4 **VIII. SECOND CAUSE OF ACTION**

5 **(Threatening To Take Action Without Lawful Authority to Take Such Action)**

6 8.1 Plaintiff realleges Paragraphs 1.1 through 7.4 and incorporates them herein as if
7 set forth in full.

8 8.2 On numerous occasions, in connection with the collection of claims, Topco or
9 its representatives have threatened to take action against debtors that Topco has no authority to
10 take, including but not limited to, threatening to revoke, suspend, or impair debtors' driver's
11 licenses.

12 8.3 The conduct described in Paragraph 8.2 is an unfair or deceptive trade practice
13 in violation of RCW 19.86.020.

14 8.4 The conduct described in Paragraph 8.2 is not reasonable in relation to the
15 development and preservation of business, and is injurious to the public interest.

16 **IX. THIRD CAUSE OF ACTION**

17 **(Threatening Impairment of Credit Rating)**

18 9.1 Plaintiff realleges Paragraphs 1.1 through 8.4 and incorporates them herein as if
19 set forth in full.

20 9.2 On numerous occasions, in connection with the collection of claims, Topco or
21 its representatives threatened debtors with impairment of their credit rating if claims were not
22 paid.

23 9.3 The conduct described in Paragraph 9.2 is an unfair or deceptive trade practice
24 in violation of RCW 19.86.020.

25 9.4 The conduct described in Paragraph 9.2 is not reasonable in relation to the
26 development and preservation of business, and is injurious to the public interest.

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X. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, State of Washington, prays for relief as follows:

10.1 That the Court adjudge and decree that the Defendants have engaged in the conduct complained of herein.

10.2 That the Court adjudge and decree that the conduct complained of constitutes unfair or deceptive acts and practices and an unfair method of competition and is unlawful in violation of the Consumer Protection Act, Chapter 19.86 RCW.

10.3 That the Court issue a permanent injunction enjoining and restraining the Defendants, and their representatives, successors, assigns, officers, agents, servants, employees, and all other persons acting or claiming to act for, on behalf of, or in active concert or participation with the Defendants, from continuing or engaging in the unlawful conduct complained of herein.

10.4 That the Court assess civil penalties, pursuant to RCW 19.86.140, of up to two thousand dollars (\$2,000) per violation against the Defendants for each and every violation of RCW 19.86.020 caused by the conduct complained of herein.

10.5 That the Court make such orders pursuant to RCW 19.86.080 as it deems appropriate to provide for restitution to consumers of money or property acquired by the Defendants as a result of the conduct complained of herein.

10.6 That the Court make such orders pursuant to RCW 19.86.080 to provide that the plaintiff, State of Washington, have and recover from the Defendants the costs of this action, including reasonable attorneys' fees.

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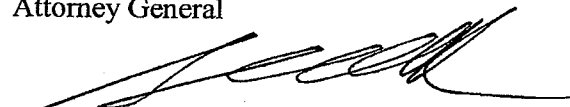
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2 10.7 For such other relief as the Court may deem just and proper.

3 DATED: Feb. 10, 2009.

4 ROBERT M. MCKENNA
5 Attorney General

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7 SHANNON E. SMITH, WSBA # 19077
8 Senior Counsel
9 Assistant Attorney General
10 Attorneys for Plaintiff
11 State of Washington
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